

**TIFFANY & BOSCO**  
P.A.

2525 EAST CAMELBACK ROAD  
THIRD FLOOR  
PHOENIX, ARIZONA 85016  
TELEPHONE: (602) 255-6000  
FACSIMILE: (602) 255-0192

Mark S. Bosco  
State Bar No. 010167  
Leonard J. McDonald  
State Bar No. 014228  
Attorneys for Secured Creditor

09-27969

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA**

Benny Leland Cotter and Judy Webster Cotter

Debtors.

U.S. Bank, National Association

Secured Creditor,

vs.

Benny Leland Cotter and Judy Webster Cotter,  
Debtors; Office of the US Trustee, Trustee.

Respondents.

No. 2:09-bk-23475-SSC

Chapter 11

**OBJECTION TO CHAPTER 11 PLAN AND  
DISCLOSURE STATEMENT**

U.S. Bank, National Association, a secured creditor, by its attorneys, TIFFANY & BOSCO, P.A., hereby objects to the proposed Chapter 11 Plan and Disclosure Statement filed by the Debtors. U.S. Bank, National Association, files this response to the proposed 11 Plan of the Debtors. This Objection is supported by the following Memorandum of Points and Authorities.

....

....

1 Dated this 12th day of April, 2010.

2  
3 Respectfully submitted,

4 TIFFANY & BOSCO, P.A.

5 By /s/ MSB #010167  
6 Mark S. Bosco  
7 Leonard J. McDonald  
8 Attorneys for Movant

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 The Chapter 11 Plan provides for an impermissible cram down of U.S. Bank, National Association's lien  
11 interest on the real property commonly known as 3834 E. Clovis Ave., Mesa AZ 85206.

12 U.S. Bank, National Association objects to the value of the subject real property as Debtors  
13 arbitrarily proposes that the fair market value of Secured Creditor's claim is \$270,000.00 without  
14 providing any legal or factual authority for such capricious treatment. Such modification is simply not  
15 supported by the Bankruptcy Code or the facts of this case. The proposed Plan appears to attempt to  
16 cram-down Secured Creditor's claim by scheduling or providing for a total claim to Secured Creditor in  
17 the amount of \$270,000.00, while in fact the total claim owed to Secured Creditor is in the amount of  
18 \$309,647.68. The Plan proposes monthly payments of \$1783.10 per month with a 5.5% interest rate.  
19 The remaining portion of the claim, approximately \$42,433.00, is to be treated as a General Unsecured  
20 Claim. The Plan proposes to pay the secured claim at an interest rate of 5.5%, which is not reasonable  
21 under current conditions and in light of the Debtors' past non-payment history. The Plan is not  
22 confirmable because it violates 11 USC Section 1123(b)(5) by attempting to modify U.S. Bank, National  
23 Association's rights as a secured creditor holding a lien position secured by the debtors principle  
24 residence. 11 USC Section 1123(b)(5) provides in part:  
25  
26

1 Subsection (B) Subject to subsection (a) of this section, a Plan may...

2  
3 Subsection (5) Modify the rights of holders of secured claims, other than a  
4 claim secured only by security interest in real property that is the Debtors  
principle residence...

5 Because the Plan attempts to modify the rights of U.S. Bank, National Association's claim secured by  
6 a lien interest in the property, which is the Debtor's personal residence, the Plan violates 11 USC  
7 Section 1123(b)(5) and therefore is not confirmable pursuant to 11 USC 1129 (a)(1).

8 Further, Secured Creditor objects to the proposed sale terms as provided in Debtors' "Plan" to the  
9 potential future sale of the property. In the instant, Debtors' cannot provide any escrow documents to  
10 assure Movant that the future sale of the property will provide a complete and full payoff of principal,  
11 interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to, advances  
12 made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid off. Nor  
13 can the Debtors' provide evidence of the property value over a five year period. Currently, Secured  
14 Creditor is 100% secured and cannot agree in the present what the property status could be in the future.  
15 At such time as Debtors can provide Secured Creditor with documentation which indicates a full payoff of  
16 principal, interest, late charges, attorneys' fees and costs, and such other costs, including but not limited to,  
17 advances made by beneficiary for taxes and insurance, if applicable, good through the date the loan is paid  
18 off, Secured Creditor will re-evaluate their position at that time.

### 19 CONCLUSION

20 Any Chapter 11 Plan proposed by the Debtor(s) must provide for and eliminate the Objections  
21 specified above in order to be reasonable and to comply with applicable provisions of the Bankruptcy  
22 Code. Secured Creditor respectfully requests that the confirmation of the Chapter 11 Plan as proposed  
23 by the Debtor(s) be denied, or in the alternative, be amended to provide for full payoff of the arrearages  
24 owed to the Secured Creditor.

25 ///

26 ///

1 WHEREFORE, secured creditor prays as follows:

2 (1) That the 11 Plan be denied.

3 (2) For such other relief as this Court deems proper.

4 DATED this 12th day of April, 2010.

5 Respectfully submitted,

6 TIFFANY & BOSCO, P.A.

7 BY /s/ MSB # 010167

8 Mark S. Bosco

9 Leonard J. McDonald

Attorneys for Secured Creditor

10 COPY of the foregoing mailed  
11 April 12, 2010 to:

12 Benny Leland Cotter and Judy Webster Cotter  
13 3834 E. Clovis Avenue  
14 Mesa, AZ 85206  
Debtors

15 William R. Richardson  
16 1745 South Alma School Rd.  
Suite 100  
17 Mesa, AZ 85210-3010  
Attorney for Debtors

18 Office of the US Trustee  
19 230 North First Ave.  
Suite 204  
20 Phoenix, AZ 85003  
Trustee

21  
22 By: Nicole E. Harrison  
23  
24  
25  
26